

TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
3608

In Re Application Of: GALCERAN MARTORELL, C.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/572,688	03/21/2006	MEHTA, H.T.	278	1794	4928

Invention: CORN GRAIN-FLAVOURING METHOD

COMMISSIONER FOR PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

07/15/2010

The fee for filing this Appeal Brief is: \$540.00

- ☐ A check in the amount of the fee is enclosed.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. _____. I have enclosed a duplicate copy of this sheet.
- ☒ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.


Signature

MICHAEL J. STRIKER
ATTORNEY FOR THE APPLICANT
REG. NO.: 27233

Dated: 09/13/2010

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on

(Date)

Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

CC:

UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: H. T. Mehta

Art Unit: 1794

Docket No. 3608

In re:

Applicant: Carlos GALCERAN MARTORELL

Serial No.: 10/572,688

Filed: March 21, 2006

BRIEF ON APPEAL

September 10, 2010

Commissioner for Patents
P O Box 1450
Alexandria, VA 22313-1450

This is a Brief on Appeal from the final rejection of Claims 5-16 by
the Examiner.

REAL PARTY IN INTEREST

The real party in interest in this application is Tecnologias Aplicadas del Maiz, SL, having a business address of Ensija, S/M (Pos. Ind. Sant Isidre) PISI, City, Sant Fruitos De Bajs, Spain, E-08272.

RELATED APPEALS AND INTERFERENCES

There are no prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

The present application originally contained Claims 1-4. Claims 1-4 have been cancelled during the prosecution.

The application currently contains Claims 5-16. Claims 5-16 have been rejected by the Examiner.

STATUS OF AMENDMENTS

On April 29, 2010, a Final Office Action has been issued by the Examiner. After the Final Office Action no Amendments have been filed.

SUMMARY OF CLAIMED SUBJECT MATTER

A process for flavoring raw unpopped kernels is defined in Claim 5, the broadest claim on file. In particular the process defined in Claim 1 includes the step of introducing in a container water and sodium chloride to obtain a hypersaturated brine, as disclosed in the specification in last four lines on page 1 and first line on page 2.

Raw unpopped corn kernels are introduced into the hypersaturated brine accommodated in the container for swelling the corn kernels. This is disclosed in lines 4-5 on page 2.

The unpopped corn kernels are kept in the brine until the corn kernels absorb the brine and swell. This is disclosed in lines 6-12 on page 2 of the specification.

The swollen unpopped corn kernels that have absorbed the brine are taken from the container and dried until they recover their original moisture level. This is disclosed in lines 13-19 on page 2 of the specification.

The dried unpopped corn kernels that have absorbed the brine are subjected to a surface coating with a fixing agent for food. This is disclosed in lines 23-28 on page 2 of the specification.

Claim 15, the second independent claim, defines a process for flavoring raw unpopped kernels which comprises the steps of introducing in a container water and sodium chloride to obtain a hypersaturated brine (last four lines of page 1, and first line on page 2, introducing raw unpopped corn kernels into the hypersaturated brine accommodated in the container for swelling the corn kernels (lines 3-5 on page 2), keeping the unpopped corn kernels in the brine for until the corn kernels absorb the brine and swell (lines 6-12) on page 2, taking the swollen unpopped corn kernels that have absorbed the brine from the container and drying the unpopped corn kernel until they recover their original moisture level (lines 14-19) on page 2), incorporating an additional food flavor during the step selected from the group consisting of the drying of the corn kernels, lines 20-22 on page 2, and the swelling of the corn kernel that have absorbed the brine (lines 23-28 on page 2), and subject to the dried unpopped corn kernels to a surface coating with a fixing agent for food to prevent a loss from the unpopped corn kernels of the food flavor incorporated earlier (lines 23-28 on page 2).

Finally, Claim 16 defines a process for flavoring raw unpopped kernels which comprises the steps of introducing in a container water and sodium chloride to obtain a hypersaturated brine (last line on page 1 and first line on page 2) introducing raw unpopped corn kernels into the hypersaturated brine accommodated in the container for swelling the corn kernels (lines 5-6 on page 2), keeping the unpopped corn kernels and the brine for until the corn kernels absorb the brine inside the unpopped corn kernel and swell (lines 6-12 on page 2), taking the swollen unpopped corn kernels that have absorbed the brine from the container and drying the unpopped corn kernels until they recover their original moisture level (lines 14-19 in page 2), and subjecting the dried unpopped corn kernels that have absorbed the brine to a surface coating outside the dried unpopped corn kernels with a fixing agent for food (lines 23-29 on page 2).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

In the Final Office Action the Examiner rejected Claims 5-16 under 35 USC 103(a) as being unpatentable over the European patent document to Evans in view of the U.S. patent to Merritt et al.

It is therefore the only ground to be reviewed on appeal.

Therefore, the only ground to be reviewed on appeal is whether Claims 5-16 are rejectable under 35 USC 103(a) over the Evans reference in view of the Merritt, et al reference.

ARGUMENT

Argument related to first ground of rejection to be reviewed on appeal.

In accordance with the present invention as defined in claim 5 the raw unpopped corn kernels are first introduced into a hypersaturated brine. The hyper saturated brine is not disclosed in any of the references applied against the original claims.

Furthermore, in the process in accordance with the present invention the raw unpopped corn kernels are kept in the brine until the unpopped corn kernels absorb the brine into their interior. Then the corn kernels which have absorbed the brine are dried. Thereafter the dried unpopped corn kernel that had absorbed the brine before are subjected to the surface coating with the fixing agent for food. Thus, in the first step the brine is absorbed exclusively into the interior of the corn kernels, and in the last step (after drying) the fixing agent for food is supplied exclusively on the exterior of the unpopped corn kernels that earlier absorbed the brine, as can be understood from claim 5 and specifically defined in new independent claim 16.

Turning now to the references and in particular to the patent to Evans, it can be seen that as clearly disclosed in this reference the corn kernels are impregnated inside and outside, as stated for example in the paragraph in lines 15-26 on the specification of the reference:

"the kernel are flavored both internally and externally".

In contrast, in the present invention the corn kernels initially absorb the brine, and then are dried so that the outer surface of the corn kernels does not contain any flavoring subject. Thereafter the dried unpopped corn kernels, which absorbed the brine before, are surface-coated with a fixing agent.

This is not disclosed in the patent to Evans.

The patent to Merritt deals exclusively with a surface coating and does not include original preliminary impregnation of the corn kernels so that the brine penetrates inside the corn kernels before surface coating.

It is believed to be clear that none of the references teaches the new features of the present invention which are defined in claims 5 and 16. The references are also not combinable because if in the Evans reference the objective is to provide the food flavor simultaneously on the inside and on the outside of the corn kernels in one step by penetrating the unpopped kernels because, in the Merritt reference the corn kernels are coated only on the outer surface.

It is respectfully submitted that claims 5 and 16 clearly and patentably distinguish the present invention from the prior art applied against the original claims and should be allowed.

Claim 15 contains similar features and should be allowed as well for the same reasons specified above.

As for the dependent claims, they depend on claim 5, they share its allowable features, and they should be allowed as well.

It is therefore respectfully requested to reconsider the present application, to reverse the Examiner's rejection of the claims, and to allow the present application.

Respectfully submitted,



Michael J. Striker
Attorney for Applicant
Reg. No. 27233

CLAIM APPENDIX

5. A process for flavoring raw unpopped kernels, comprising the steps of introducing in a container water and sodium chloride to obtain a hypersaturated brine; introducing raw unpopped corn kernels into the hypersaturated brine accommodated in the container for swelling the corn kernels; keeping the unpopped corn kernels in the brine for until the corn kernels absorb the brine and swell; taking the swollen unpopped corn kernels that have absorbed the brine from the container and drying the unpopped corn kernels until they recover their original moisture level; and subjecting the dried unpopped corn kernels that have absorbed the brine to a surface coating with a fixing agent for food.

6. A process for flavoring raw unpopped corn kernels as defined in Claim 5, wherein said keeping the unpopped corn kernels in the brine includes keeping the unpopped corn kernels within a time between 8 and 20 hours at room temperature and under atmospheric pressure.

7. A process for flavoring raw unpopped corn kernels as defined in Claim 5, wherein said drying includes drying by spreading the unpopped corn kernels on perforated trays and applying hot air for a time substantially 1-2 hours.

8. A process for flavoring raw unpopped corn kernels as defined in Claim 5, further comprising subjecting a mixture of the water and the sodium chloride to a stirring step to facilitate obtaining of the brine.

9. A process for flavoring raw unpopped corn kernels as defined in Claim 5, wherein said keeping the unpopped corn kernels in the brine includes keeping the unpopped corn kernels in the brine under pressure.

10. A process for flavoring raw unpopped corn kernels as define in Claim 5, wherein said keeping the unpopped corn kernels in the brine includes keeping the unpopped corn kernels in the brine at a temperature substantially higher than room temperature.

11. A process of flavoring raw unpopped corn kernels as defined in Claim 5, wherein said keeping the unpopped corn kernels in the brine includes keeping the unpopped corn kernels in the brine under pressure and at a temperature substantially higher than room temperature.

12. A process of flavoring raw unpopped corn kernels as defined in Claim 5, wherein said subjecting includes subjecting the unpopped corn kernels to a surface coating with a fixing agent which does not contain a food flavor.

13. A process of flavoring raw unpopped corn kernels as defined in Claim 5, wherein said subjecting includes subjecting the unpopped corn kernels to a surface coating with a fixing agent which includes a food flavor.

14. A process of flavoring raw unpopped corn kernels as defined in Claim 5, and further comprising using as the fixing agent food-grade shellac and a flavoring agent.

15. A process for flavoring raw unpopped kernels, comprising the steps of introducing in a container water and sodium chloride to obtain a hypersaturated brine; introducing raw unpopped corn kernels into the hypersaturated brine accommodated in the container for swelling the corn kernels; keeping the unpopped corn kernels in the brine for until the corn kernels absorb the brine and swell; taking the swollen unpopped corn kernels that have absorbed the brine from the container and drying the unpopped corn kernels until they recover their original moisture level; incorporating an additional food flavor during the step selected from the group consisting of the drying of the corn kernels and the swelling of the corn kernels that have absorbed the brine; and subjecting the dried unpopped corn kernels to a surface coating with a fixing agent for food to prevent a loss from the unpopped corn kernels of the food flavor incorporated earlier.

16. A process for flavoring raw unpopped kernels, comprising the steps of introducing in a container water and sodium chloride to obtain a hypersaturated brine; introducing raw unpopped corn kernels into the hypersaturated brine accommodated in the container for swelling the corn kernels; keeping the unpopped corn kernels in the brine for until the corn kernels absorb the brine inside the unpopped corn kernels and swell; taking the swollen unpopped corn kernels that have absorbed the brine from the container and drying the unpopped corn kernels until they recover their original moisture level; and subjecting the dried unpopped corn kernels that have absorbed the brine to a surface coating outside the dried unpopped corn kernels with a fixing agent for food.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.